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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,662	01/14/2004	Daniel L. Paulete		4462

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT PAPER NUMBER

3764

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/757,662		PAULETE, DANIEL L.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Victor K. Hwang		3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by *Greenly* (US Pat. 3,572,698). *Greenly* discloses a climbing apparatus comprising a structure of rigid material with a cross-section resembling a rounded, inverted “V” with a pronounced concave longitudinal furrow on the underside length and a plurality of apertures 66, or 90 through which a flexible elongated member may be removably coupled to suspend and stabilize the same from fixed points about the apparatus. The space between rods 118 and surface 108 also reads upon a plurality of apertures through which a flexible elongated member may be removably coupled to suspend and stabilize the same from fixed points about the apparatus. The apertures 66 are also considered to read upon a plurality of closed loop members extending from the apparatus wherein a flexible elongated member may be removably coupled to suspend and stabilize the apparatus from fixed points about the apparatus. Figs. 5 and 6 show at least one support brace 132 spanning the furrow to which a support line may be removably coupled. Fig. 5 shows a plurality of apparatus contiguous with one another.

3. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by *Smith* (US Pat. 4,113,400). *Smith* discloses a hanging apparatus comprising a structure of rigid material

with a cross-section resembling a rounded, inverted "V" with a pronounced concave longitudinal furrow 19 on the underside length and a plurality of apertures 20, see Swift Lift System information from Dayton/Richmond Concrete Accessories, through which a flexible elongated member may be removably coupled to suspend and stabilize the same from fixed points about the apparatus. A plurality of the apparatuses can be arranged contiguous with one another to extend the longitudinal furrow.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Yoshida et al.* (US Pat. 6,544,145 B2) in view of *Nixel et al.* (DE 4,312,704 A1). *Yoshida et al.* discloses a hanging overhead climbing simulator (Figs. 7 and 8) comprising a plurality of structural panels of rigid material 10 providing a climbing surface from which the climber is underneath. The rigid material is supported by a plurality of flexible elongated members 21-23. The panels may present a variety of shapes to simulate a rock climbing surface and the lengths of the elongated members 21-23 can be varied to adjust the orientation of the climbing surface as desired.

*Yoshida et al.* does not disclose the shape of the rigid material having a cross-section resembling a rounded, inverted "V" with a pronounced concave longitudinal furrow on the underside length and a plurality of apertures (claim 1) or closed loops (claim 2) through which

the flexible elongated members may be removably coupled; and a plurality of the apparatus contiguous with one another to extend the longitudinal furrow in a multitude of orientations and configurations (claim 4).

*Yoshida et al.* does not disclose how the elongated flexible members 21-23 are secured to the rigid climbing structure. To connect the elongated flexible members 21-23 to the apparatus, it would clearly require some means to secure a portion of the elongated wires to the structure. Closed loops and apertures are well known in the art for providing such means. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of *Yoshida et al.* with closed loops or apertures since the examiner takes Official Notice of the use of closed loops and apertures for securing the ends of elongated flexible members to which a structure is suspended and the selection of these known equivalents to secure the ends of the flexible elongated members would be within the level of ordinary skill in the art.

*Nixel et al.* discloses a plurality of panels of rigid material 1 secured to one another to create a rock climbing surface. A crevice is created (Fig. 12) wherein the crevice has a cross-section resembling a rounded, inverted “V” with a pronounced concave longitudinal furrow. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the rock climbing structure of *Yoshida et al.* with a simulated crevice, since crevices are commonly found in rock formations and *Nixel et al.* discloses climbing panels of various shapes including forming a crevice and also since a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Dayton/Richmond Concrete Accessories* (Lifting Systems, 6/03) and *Haeussler et al.* (US Pat. 4,398,762) disclose a Swift Lift system referred to in *Smith*.


*Flynn* (US Pat. 3,472,509), *Christensen* (US Pat. 5,543,185), *Rennex* (US Pat. 6,551,216 B2), *Souchot* (FR 2,678,515 A1), *Roux* (FR 2,728,801 A1), *Kroluk* (DE 29811033 U1), *Brand & Schluttig* (DE 29813334 U1), *Baek* (KR 2004012262 A), *Taiyo* (JP 20040166851 A) and *Janschitz* (DE 10 2004 030 217 A1) disclose climbing apparatus having structure that read upon the claimed invention.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Victor K. Hwang  
December 7, 2006

  
(JACKIE) TAN-IVEN HO  
PRIMARY EXAMINER  
12/8/06